

SETTLEMENT AGREEMENT BETWEEN
MISSOURI REAL ESTATE COMMISSION AND RUTLEDGE REAL ESTATE AND HOLDING COMPANY LLC
AND JOHN MICKEL RUTLEDGE

Come now Rutledge Real Estate and Holding Company, LLC, ("Rutledge LLC") and John Mickel Rutledge ("Rutledge") (collectively "Licensees") and the Missouri Real Estate Commission ("Commission") and enter into this settlement agreement for the purpose of resolving the question of whether Rutledge LLC's license as a real estate association and Rutledge's license as a real estate broker associate will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensees' licenses, and, additionally, the right to a disciplinary hearing before the Commission under § 621.110, RSMo.

Licensees Rutledge LLC and Rutledge acknowledge that they understand the various rights and privileges afforded them by law, including the right to a hearing of the charges against them; the right to appear and be represented by legal counsel; the right to have all charges against them proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against them; the right to present evidence on their own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against them and, subsequently, the right to a disciplinary hearing before the Commission at which time they may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against their licenses. Being aware of these rights provided them by operation of law, Rutledge LLC and Rutledge knowingly and voluntarily waive each and every one of these rights and freely enter into this settlement agreement and agree to abide by the terms of this document, as they pertain to them.

Rutledge LLC and Rutledge acknowledge that they have received a copy of the documents relied upon by the Commission in determining there was cause to discipline their licenses, along with citations to law and/or regulations the Commission believes were violated.

For the purpose of settling this dispute, Rutledge LLC and Rutledge stipulate that the factual allegations contained in this settlement agreement are true and stipulates with the Commission that their licenses,

¹ All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

numbered 2006035879 (Rutledge LLC) and 2005012828 (Rutledge) are subject to disciplinary action by the Commission in accordance with the provisions of Chapter 621 and §§ 339.010-339.205 and 339.710-339.855, RSMo.

Joint Stipulation of Fact and Conclusions of Law

1. The Commission is an agency of the state of Missouri created and established pursuant to § 339.120, RSMo, for the purpose of licensing all persons engaged in the practice as a real estate broker or salesperson in this state. The Commission has control and supervision of the licensed occupations and enforcement of the terms and provisions of Sections 339.010-339.205 and 339.710-339.855, RSMo.

2. Licensee, Rutledge LLC, holds a real estate association license from the Commission, license number 2006035879. The Commission issued Rutledge LLC's license on October 18, 2006 and it expires June 30, 2018. Licensee's license was current and active at all relevant times herein. Licensee John Mickel Rutledge is the designated broker for Rutledge LLC.

3. Licensee, John Mickel Rutledge, holds a broker associate license from the Commission, license number 2005012828. The Commission issued Rutledge's broker associate license on April 22, 2005. Licensee's license expires June 30, 2018. Licensee Rutledge's license was current and active at all relevant times herein.

4. From September 16-18, 2014, the Commission conducted an audit of Licensees. The Commission's audit revealed that Licensees did not maintain an escrow account for the deposit of rents and payment of property expenses. All rents and expenses were deposited into and out of the brokerage operating account. No liability balance existed for owner funds as the broker stated that he pays the owner the balance of rents each month. Additionally, the Commission's audit revealed:

- a. In violation of §§ 339.100.2(1) and 339.105.1, RSMo, and regulations 20 CSR 2250-8.120(4) and 8.220(3), on numerous instances, rent was not deposited and maintained in an escrow account.
- b. In violation of § 339.105.1, RSMo, there was an identified overage of \$61.20 in the property management escrow account due to Licensees taking incorrect management fees.
- c. In violation of § 339.105.1, RSMo, Licensees committed numerous instances of commingling of funds.

- d. In violation of §§ 339.720.1, 339.780.2, RSMo and regulation 20 CSR 2250-8.090(9)(F), Licensees' management agreement did not include the licensee's duties and responsibilities.
- e. In violation of § 339.730.1(1), RSMo, on 17 instances, Rutledge failed to follow the terms of the written agreement with the landlord in that Rutledge used an incorrect management fee.
- f. In violation of § 339.760.1, RSMo, Rutledge failed to adopt a single written policy identifying and describing the relationships in which the designated broker and affiliated licensees could engage with any seller, landlord, buyer or tenant.
- g. In violation of § 339.780.1, RSMo, and regulation 20 CSR 2250-8.090(4)(A)11, on two instances, Licensees' employee entered into a listing agreement on behalf of the broker without written authorization from the designated broker.
- h. In violation of § 339.780.2, RSMo, and regulation 20 CSR 2250-8.090(9)(B), Licensees' management agreement did not state the complete amount of fee or commission to be paid.
- i. In violation of § 339.780.2, RSMo, and regulation 20 CSR 2250-8.090(9)(B), Licensees' management agreement did not state when the fee or commission would be paid.
- j. In violation of § 339.780.2, RSMo, and regulation 20 CSR 2250-8.090(9)(G), Licensees' management agreement with the landlord did not contain a statement permitting or prohibiting an offer of subagency.
- k. In violation of § 339.780.2, RSMo, and regulation 20 CSR 2250-8.200(1), on 14 instances, Rutledge managed property without an agreement.
- l. In violation of § 339.780.3, RSMo, Rutledge acted as an agent of the buyer without obtaining a written agency agreement.
- m. In violation of regulations 20 CSR 2250-4.020(4) and 4.040(1), Rutledge failed to timely notify the Commission of a change in the association name. Licensees changed the brokerage name to Rutledge Real Estate and Holding Company LLC on November 14, 2013 but did not notify the Commission until October 21, 2014.
- n. In violation of regulations 20 CSR 2250-4.030(1) and 8.010(2), Licensees' business sign did not bear the name under which the brokerage is licensed and the fictitious name was not registered with the Missouri Secretary of State.

- o. In violation of regulation 20 CSR 2250-8.090(4)(A)1, Licensees' listing agreement did not include the price.
- p. In violation of regulation 20 CSR 2250-8.090(4)(A)14, on three occasions, Licensees' listing agreement did not contain all terms and conditions under which the property could be sold.
- q. In violation of regulation 20 CSR 2250-8.090(4)(C), a change to a listing agreement was not initialed by the owner or the broker.
- r. In violation of regulation 20 CSR 2250-8.090(5)(A)4, Licensees' written authorization to act on behalf of the buyer did not contain an expiration date.
- s. In violation of regulation 20 CSR 2250-8.090(9)(A), on four instances, Licensees' management agreement did not identify the property.
- t. In violation of regulation 20 CSR 2250-8.090(9)(C), Licensees' management agreement did not specify whether security deposits and prepaid rents would be held by the broker or the owner.
- u. In violation of regulation 20 CSR 2250-8.090(9)(H), Licensees' management agreement did not include a statement which permits or prohibits the designated broker from acting as a dual agent.
- v. In violation of regulation 20 CSR 2250-8.090(9)(I), Licensees' management agreement did not include a statement which permits or prohibits the designated broker from acting as a transaction broker.
- w. In violation of regulation 20 CSR 2250-8.090(9)(J), Licensees' management agreement did not specify whether or not the designated broker is authorized to cooperate with and compensate other designated brokers.
- x. In violation of regulation 20 CSR 2250-8.090(9)(K), Licensees' management agreement failed to contain a statement which confirmed the landlord received a Broker Disclosure Form.
- y. In violation of regulation 20 CSR 2250-8.096(1), on eight instances Licensees failed to disclose the licensee's brokerage relationship in writing.
- z. In violation of regulation 20 CSR 2250-8.100(1), on seven instances, Licensees failed to specify all terms and conditions in the offer to purchase.

- aa. In violation of regulation 20 CSR 2250-8.100(2), all buyers to a transaction did not sign an addendum to the contract.
- bb. In violation of regulations 20 CSR 2250-8.150(3) and 8.160(1), Rutledge failed to retain a copy of the buyer's and seller's closing statements.
- cc. In violation of regulations 20 CSR 2250-8.150(3) and 8.160(1), Rutledge failed to retain a copy of the seller's closing statement.
- dd. In violation of regulation 20 CSR 2250-8.200(1), on 18 instances, Rutledge disbursed funds from the property management escrow account when the owner's account balance was not sufficient to cover the disbursement.

5. On May 2-4 and 24-26, 2016, the Commission conducted a limited re-audit of Licensees. The Commission's limited re-audit revealed:

- a. In violation of § 339.105.1, RSMo, there were shortages in the property management escrow account, that totaled \$3,577.53, Regions Bank account ending 8596 ("Account 8596"):
 - i. \$505.90 shortage due to bank charges not being reimbursed.
 - ii. \$71.63 shortage due to payments from Account 8596 for personal use.
 - iii. \$3,000 shortage due to a payment to a vendor not charged to or reimbursed by the owner.
- b. In violation of § 339.105.1, RSMo, there was a temporary shortage in the property management escrow account, Regions Bank, account ending 8618 ("Account 8618") from February 5 through March 30, 20126 due to not maintaining the security deposits intact.
- c. In violation of § 339.105.1, RSMo, on numerous instances, there was commingling in Account 8596.
 - i. On multiple instances there were deposits from the business account.
 - ii. On three instances (September and November 2015 and January 2016), Licensees used Account 8596 to make payments to a personal credit card.
 - iii. On multiple instances, Licensees made payments out of Account 8596 via electronic debit for personal expenses.

- iv. On multiple instances security deposits Licensees transferred security deposits in and out of Account 8618.
- d. In violation of § 339.105.1, RSMo, there was an overdraft in Account 8596.
- e. In violation of § 339.105.3, RSMo, Rutledge did not maintain records necessary to determine the adequacy of Account 8596.
 - i. Between May and November 2015 and January and March 2016, management fee payments did not match management fee calculation.
 - ii. As of May 18, 2016, there were unverified deposits from the broker's business account.
 - iii. On June 11, June 19, September 3, September 17, and October 22, 2015, there were unverified withdrawals to Rutledge's business account and according to Rutledge, there were multiple transfers in February and March, 2016, that were payments to vendors, with no related transaction, or transfers to pay owners or new management companies when ceasing management.
 - iv. Deposits and checks did not contain the related transaction.
 - v. Licensees paid personal credit cards from the property management escrow account with no related transactions.
 - vi. On three instances, the deposit amount on the deposit ticket did not match the deposit amount on the bank statement.
 - vii. There were numerous deposits and withdrawals from the security deposit account without a related transaction.
 - viii. Licensees failed to retain records including voided checks, deposit tickets and invoices.
 - ix. Licensees had no check register.
 - x. There was an overdraft in the property management escrow account.
 - xi. Commission examiners were unable to determine if any liability remained to the escrow account due in part to owner statements that did not contain an ending balance and the transfers of owner payments did not contain related transactions.

- xii. There were multiple transfers to and from the security deposit account and the broker's business account was unverified or unable to net to zero for the time period of February through April 2016.
- xiii. The Commission examiners were unable to verify the adequacy of case deposits due to deposit tickets that contained cash as part of the deposit not including related transactions.
- xiv. Payments to vendors did not correspond to vendor invoices.
- f. In violation of § 339.760.1, RSMo, Rutledge's written policy did not describe the relationships in which the designated broker and affiliated licensees could engage with any seller, landlord, buyer or tenant and did not describe the sellers, buyers, landlords or disclose any dual agency.
- g. In violation of § 339.760.1, RSMo, Rutledge entered into a management agreement which authorized a relationship that was not identified in the broker's written policy on agency relationships.
- h. In violation of regulation 20 CSR 2250-4.030(1), Licensees' fictitious name was not registered with the Missouri Secretary of State.
- i. In violation of regulation 20 CSR 2250-8.090(9)(I), Licensees' management agreement did not include a statement permitting or prohibiting the designated broker from acting as a transaction broker.
- j. In violation of regulation 20 CSR 2250-8.096(1), on six instances, Licensees' brokerage relationship was not disclosed in writing.
- k. In violation of regulation 20 CSR 2250-8.160(2), on multiple instances, Licensees failed to retain records including six voided checks from Account 8596, numerous deposit tickets for Accounts 8596 and 8618 and invoices.
- l. In violation of regulation 20 CSR 2250-8.220(8), security deposits were not maintained intact.
- m. In violation of regulation 20 CSR 2250-8.220(8), on multiple instances, the related transaction was not indicated on each check written, the corresponding check stub or other record of disbursement on the property management escrow account.

- n. In violation of regulation 20 CSR 2250-8.220(8), on multiple instances, Licensees failed to indicate the related transaction on each deposit slip for the property management escrow accounts.
6. The Commission's 2016 limited re-audit also revealed:
- a. Rutledge stated he ceased all management activity as of March 31, 2016 but had only informed the owners of this verbally. The Commission's examiner reviewed bank statements through April 30, 2016 and identified activity in the escrow account for March through April 2016 consisting of transfers to the new management company, payments to owners, payments to vendors for outstanding items and Housing Authority deposits. The examiner noted no activity in the owner statements after March 31, 2016 and that Licensees did not charge a management fee for April 2016. The examiner also noted that approximately \$9,551.80 of funds was not forwarded to the new management entity. Rutledge provided the examiner with a calculation of funds owed to him, paid out of his personal account, totaling \$11,877.77. Rutledge stated he sent copies of all bills totaling \$11,877.77 to the new management company and requested reimbursement at which time he'd send the \$9,551.80 to the management company.
 - b. The bank balance as of April 29, 2016 was \$2,434 after payments made to transfer all activity to the new management company. Rutledge stated that after all of the activity, the balance of the account would be \$9 and there were no additional liabilities.
 - c. The first audit included numerous violations related to the management agreements. Rutledge entered into a new management agreement with four of the six owners whose agreements were examined. The new agreements corrected three of the five instances of incomplete management fees and one of four instances where the property was not fully identified. The violations noted in the two agreements that were still in effect at the second audit, violations were not corrected. Rutledge stated he'd sent a new agreement but the owners never returned a signed copy.
7. Section 339.040.1, RSMo, states, in relevant part:
- 1. Licenses shall be granted only to persons who present, and corporations, associations, limited liability companies, and professional corporations whose officers, managers, associates, general partners, or members who actively participate in such entity's brokerage, broker-

salesperson, or salesperson business present, satisfactory proof to the commission that they:

- (1) Are persons of good moral character; and
- (2) Bear a good reputation for honesty, integrity, and fair dealing; and
- (3) Are competent to transact the business of a broker or broker salesperson in such a manner as to safeguard the interest of the public.

8. Section 339.105, RSMo, states, in relevant part:

1. Each broker who holds funds belonging to another shall maintain such funds in a separate bank account in a financial institution which shall be designated an escrow or trust account. This requirement includes funds in which he or she may have some future interest or claim. Such funds shall be deposited promptly unless all parties having an interest in the funds have agreed otherwise in writing. No broker shall commingle his or her personal funds or other funds in this account with the exception that a broker may deposit and keep a sum not to exceed one thousand dollars in the account from his or her personal funds, which sum shall be specifically identified and deposited to cover service charges related to the account.

...

3. In conjunction with each escrow or trust account a broker shall maintain books, records, contracts and other necessary documents so that the adequacy of said account may be determined at any time. The account and other records shall be provided to the commission and its duly authorized agents for inspection at all times during regular business hours at the broker's usual place of business.

9. Section 339.720.1, RSMo, states, in relevant part:

A licensee's general duties and obligations arising from the limited agency relationship shall be disclosed in writing to the seller and the buyer or to the landlord and the tenant pursuant to sections 339.760 to 339.780. Alternatively, when engaged in any of the activities enumerated in section 339.010, a licensee may act as an agent in any transaction in accordance with a written agreement as described in section 339.780.

10. Section 339.730.1(1), RSMo, states, in relevant part:

1. A licensee representing a seller or landlord as a seller's agent or a landlord's agent shall be a limited agent with the following duties and obligations:

- (1) To perform the terms of the written agreement made with the client[.]

11. Section 339.760, RSMo, states, in relevant part:

Every designated broker who has affiliated licensees shall adopt a written policy which identifies and describes the relationships in which the designated broker and affiliated licensees may engage with any seller, landlord, buyer, or tenant as part of any real estate brokerage activities.

12. Section 339.780, RSMo, states, in relevant part:

1. All written agreements for brokerage services on behalf of a seller, landlord, buyer, or tenant, shall be entered into by the designated broker on behalf of that broker and affiliated licensees, except that the designated broker may authorize affiliated licensees in writing to enter into written agreements on behalf of the designated broker.

2. Before engaging in any of the activities enumerated in section 339.010, a designated broker intending to establish a limited agency relationship with a seller or landlord shall enter into a written agency agreement with the party to be represented. The agreement shall include a licensee's duties and responsibilities specified in section 339.730 and the terms of compensation and shall specify whether an offer of subagency may be made to any other designated broker.

3. Before or while engaging in any of the activities enumerated in section 339.010, a designated broker acting as a single agent for a buyer or tenant shall enter into a written agency agreement with the buyer or tenant. The agreement shall include a licensee's duties and responsibilities specified in section 339.740 and the terms of compensation.

13. Regulation 20 CSR 2250-4.020(4) states, in relevant part:

Within ten (10) days following a change in name or home address, each licensee shall notify the commission in writing.

14. Regulation 20 CSR 2250-4.030(1) states, in relevant part:

Any broker doing business under any name other than the broker's legal name or entity doing business under any name other than the name registered with the secretary of state, shall first comply with the provisions of sections 417.200 – 417.230, RSMo on the registration of fictitious names and shall furnish the commission a copy of the registration within ten (10) days of receipt of the official registration from the secretary of state.

15. Regulation 20 CSR 2250-4.040(1) states, in relevant part:

A broker shall not conduct business under any other name or at any other address than the one for which the broker's individual license is issued unless the broker first complies with 20 CSR 2250-4.030. If a broker changes his/her name or business address, the broker shall notify the commission in writing within ten (10) days after the change becomes effective.

16. Regulation 20 CSR 2250-8.010(2) states, in relevant part:

A broker's business sign of sufficient size to identify it and bearing the name under which the broker or the broker's firm is licensed, or the regular business name, shall be displayed outside of the broker's regular place of business.

17. Regulation 20 CSR 2250-8.090 states, in relevant part:

...

(4) Seller's/Lessor's Agency (Sale/Lease Listing) Agreement.

(A) Every written listing agreement or other written agreement for brokerage services shall contain all of the following:

1. The price;

...

11. The signatures of all owners and the listing broker or listing agent as authorized by the broker;

...

14. All other terms and conditions under which the property is to be sold, leased, or exchanged.

...

(C) Any addendums, riders, endorsements, attachments, or changes to the listing agreement or other written agreement for brokerage services must contain the initials of all parties.

(5) Buyer's/Tenant's Agency Agreement.

(A) Every written buyer or tenant authorization shall contain all of the following:

...

4. An expiration date[.]

...

(9) Every written property management agreement or other written authorization between a broker and the owners of the real estate shall:

(A) Identify the property to be managed;

(B) State the amount of fee or commission to be paid and when the fee or commission will be paid;

(C) Specify whether security deposits and prepaid rents will be held by the broker or the owner;

...

(F) Include the licensee's duties and responsibilities;

(G) Contain a statement which permits or prohibits the designated broker from offering subagency (not applicable for transaction broker agreements);

(H) Contain a statement which permits or prohibits the designated broker and/or affiliated licensee from acting as a disclosed dual agent and if permitted, the duties and responsibilities of a dual agent;

(I) Contain a statement which permits or prohibits the designated broker and/or affiliated licensee from acting as a transaction broker and if permitted, the duties and responsibilities of a transaction broker;

(J) Include specification of whether or not the designated broker is authorized to cooperate with and compensate other designated brokers acting pursuant to any other brokerage relationship as defined by sections 339.710 to 339.860, RSMo, including but not limited to tenant's agents and/or transaction brokers;

(K) Contain a statement which confirms that the landlord received the Broker Disclosure Form prescribed by the commission:

1. On or before the signing of the brokerage relationship agreement; or
2. Upon the licensee obtaining any personal or financial information, whichever occurs first[.]

18. Regulation 20 CSR 2250-8.096 states, in relevant part:

- (1) Licensees acting with or without a written agreement for brokerage services pursuant to sections 339.710 to 339.860, RSMo, are required to have such relationships confirmed in writing by each party to the real estate transaction on or before such party's first signature to the real estate contract. Nothing contained herein prohibits the written confirmation of brokerage relationships from being included or incorporated into the real estate contract, provided that any addendum or incorporated document containing the written confirmation must include a separate signature section for acknowledging the written confirmation that shall be signed and dated by each party to the real estate transaction.

(A) Written confirmation must –

...

1. Identify the source or sources of compensation;

...

3. Confirm that the broker relationships, if required by rule or regulation, were disclosed to the seller/landlord and/or buyer/tenant or their respective agents and/or transaction brokers no later than the first showing, upon

first contact, or immediately upon the occurrence of any change to that relationship;

...

5. Be signed and dated by the seller/landlord and buyer/tenant. If the landlord has entered into a written property management agreement pursuant to 20 CSR 2250-8.200 – 20 CSR 2250-8.210, the landlord shall not be required to sign the written confirmation;

6. Be signed and dated by the disclosing licensees on or before the contract date. If a landlord's agent or transaction broker is conducting property management pursuant to 20 CSR 2250-8.200 – 20 CSR 2250-8.210, the unlicensed office personnel may, in the performance of the duties enumerated in 339.010.5(5)(a)-(e), sign the written confirmation on behalf of the landlord's agent or transaction broker.

19. Regulation 20 CSR 2250-8.100 states, in relevant part:

- (1) Every licensee shall make certain that all of the terms and conditions authorized by the principal in a transaction are specified and included in an offer to sell or buy and shall not offer the property on any other terms. Every written offer shall contain the legal description or property address, or both, and city where the property is located, or in the absence of, a clear description unmistakably identifying the property.
- (2) Every licensee shall promptly tender to the seller or seller's agent every written offer to purchase and shall promptly tender to the buyer or the buyer's agent any counteroffer made by the seller, including any back-up contracts properly identified as such, and upon procuring a proper acceptance of an offer to purchase shall promptly deliver copies of the same, signed by both buyer and seller, to each party to the transaction. A buyer or seller must be promptly advised when an offer or counteroffer has been rejected.

20. Regulation 20 CSR 2250-8.120(4) states, in relevant part:

Each broker shall deposit into the escrow or trust account all funds coming into the broker's possession as set out in section 339.100.2(1), RSMo, including funds in which the broker may have some future interest or claim and including, but not limited to, earnest money deposits, prepaid rents, security deposits, loan proceeds and funds paid by or for the parties upon closing of the transaction. No broker shall commingle personal funds or other funds in the broker's escrow account except to the extent provided by section 339.105.1, RSMo. Commissions payable must be removed from the escrow account no later than ten (10) banking days following the receipt of the next statement of the escrow account. When the licensee receives all interest earned, interest payable to a licensee must be removed from the escrow account within ten (10) banking days following the receipt of the next statement of the escrow account.

21. Regulation 20 CSR 2250-8.150(3) states, in relevant part:

The brokers for the buyer and the seller shall retain legible copies of both buyer's and seller's signed closing statements.

22. Regulation 20 CSR 2250-8.160 states, in relevant part:

(1) Every broker shall retain for a period of at least three (3) years true copies of all business books; accounts, including voided checks; records; contracts; brokerage relationship agreements; closing statements and correspondence relating to each real estate transaction that the broker has handled. The records shall be made available for inspection by the commission and its authorized agents at all times during usual business hours at the broker's regular place of business. No broker shall charge a separate fee relating to retention of records.

(2) Every broker shall retain for a period of at least three (3) years true copies of all property management agreements, correspondence or other written authorization relating to each real estate transaction relating to leases, rentals or other management activities, the broker has handled. The broker must also retain all business books, accounts and records unless these records are released to the owner(s) or transferred to another broker by written detailed receipt or transmittal letter agreed to in writing by all parties to the transaction.

23. Regulation 20 CSR 2250-8.200(1) states, in relevant part:

When managing property a licensee shall not rent or lease, offer to rent or lease, negotiate, or offer or agree to negotiate, the rent or lease, list or offer to list for lease or rent, assist or direct in procuring of prospects calculated to result in the lease or rent, assist or direct in the negotiation of any transaction calculated or intended to result in the lease or rent, or show that property to prospective renters or leases unless the licensee's broker holds a current written property management agreement or other written authorization signed by the owner of the real estate or the owner's authorized agent.

24. Regulation 20 CSR 2250-8.220 states, in relevant part:

...

(3) All money received by a broker in connection with any property management must be deposited within ten (10) banking days to the escrow or trust account maintained by the broker.

...

(8) Each check written on an escrow account, or each corresponding check stub, or other record of disbursement of funds from the account and each deposit ticket shall indicate the related transaction. Each check written on an escrow account for licensee fees or commission

shall be made payable to the licensee who is owed the fee or commission or to the firm's general operating account.

25. Licensees' conduct, as described in paragraphs 3 through 6 above, constitutes cause to discipline Licensees' licenses.

26. Cause exists for the Commission to take disciplinary action against Licensees' licenses under § 339.100.2(1), (3), (15), (16) and (19), RSMo, which states in pertinent part:

2. The Commission may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any state-certified real estate appraiser, state-licensed real estate appraiser, or any person who has failed to renew or has surrendered his or her certificate or license for any one or any combination of the following causes:

(1) Failure to maintain and deposit in a special account, separate and apart from his or her personal or other business accounts, all moneys belonging to others entrusted to him or her while acting as a real estate broker or as the temporary custodian of the funds of others, until the transaction involved is consummated or terminated, unless all parties having an interest in the funds have agreed otherwise in writing;

...

(3) Failing within a reasonable time to account for or to remit any moneys, valuable documents or other property coming into his or her possession which belongs to others;

...

(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860*, or any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860*;

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

...

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence[.]

Joint Agreed Disciplinary Order

27. Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Commission in this matter under the authority of §§ 536.060, 621.045.4 and 621.110, RSMo.

28. The terms of discipline shall include **Licensees' licenses shall be placed on a period of probation for three (3) years.** Licensees' licenses are hereby placed on three (3) years' probation. During the period of **probation** on their licenses, Licensees shall be entitled to practice as a real estate association and real estate broker associate provided they adhere to all the terms stated herein. The period of probation shall constitute the "disciplinary period."

29. **Terms and conditions of the disciplinary period.** Terms and conditions of the disciplinary period are as follows:

Specific Terms

- a. During the period of probation, Rutledge shall be prohibited from managing property on behalf of himself or his brokerage.
- b. During the first year of probation, the Commission shall perform a limited re-audit of Licensees to ensure that Licensee Rutledge is not engaging in property management on behalf of himself or his brokerage.

General Terms

- a. Licensees shall keep the MREC apprised at all times in writing of their current addresses and telephone numbers at each place of residence and business. Licensees shall notify the MREC in writing within ten days of any change in this information.
- b. Licensees shall timely renew Licensees' licenses, timely pay all fees required for license renewal, and comply with all other requirements necessary to maintain their licenses in a current and active state. During the disciplinary period, Licensees shall not place their licenses on inactive status as would otherwise be allowed under 20 CSR 2250-4.050. Alternatively, without violating the terms and conditions of this Settlement Agreement, Licensees may surrender their real estate licenses by submitting a letter to the MREC. If Licensees apply for a real estate license after surrender, Licensees shall be required to requalify as if original applicants. Licensees would have to apply as an original applicant for a salesperson license. The MREC will not be precluded from basing its decision, wholly or

partially, on the findings of fact, conclusions of law, and discipline set forth in this Settlement Agreement.

c. Licensees shall meet in person with the MREC or its representative at any such time and place as required by the MREC or its designee upon notification from the MREC or its designee. Said meetings will be at the MREC's discretion and may occur periodically during the probation period.

d. Licensees shall immediately submit documents showing compliance with the requirements of this Order to the MREC when requested by the MREC or its designee.

e. During the probationary period, Licensees shall accept and comply with unannounced visits from the MREC's representatives to monitor compliance with the terms and conditions of this Order.

f. Licensees shall comply with all relevant provisions of Chapter 339, RSMo, as amended; all rules and regulations of the MREC; and all local, state, and federal laws. "State" as used herein refers to the State of Missouri and all other states and territories of the United States.

g. Licensees shall report to the MREC each occurrence of Licensees' being finally adjudicated and found guilty, or entering a plea of guilty or nolo contendere, in a state or federal criminal prosecution, to felony or misdemeanor offenses, within ten business days of each such occurrence.

30. This Agreement does not bind the Commission or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Agreement that are either now known to the Commission or may be discovered.

31. This Agreement does not bind the Commission or restrict the remedies available to it concerning any future violations by Licensee of Chapter 339, RSMo, as amended, or the regulations promulgated thereunder, or of the terms of this Agreement.

32. All parties agree to pay all their own fees and expenses incurred as a result of this case, its settlement or any litigation.

33. The parties to this Agreement understand that the Missouri Real Estate Commission will maintain this Agreement as an open record of the Commission as provided in Chapters 339, 610 and 324, RSMo.

34. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither this settlement agreement nor any of its provisions

may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.


35. Licensees, together with Licensees' heirs and assigns, and Licensees' attorneys, do hereby waive, release, acquit and forever discharge the Commission, its respective members and any of its employees, agents, or attorneys, including any former Commission members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof to be void or unenforceable.

36. If no contested case has been filed against Licensees, Licensees have the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement agreement constitute grounds for denying or disciplining the licenses of Licensees. If Licensees desire the Administrative Hearing Commission to review this Agreement, Licensees may submit this request to: **Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.**

37. If Licensees have requested review, Licensees and Commission jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensees' licenses and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensees' licenses. Effective the date the Administrative Hearing Commission determines that the agreement sets forth cause for disciplining Licensees' licenses, the agreed upon discipline set forth herein shall go into effect. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the Commission may proceed to seek discipline against Licensees as allowed by law. If the Licensees do not submit the agreement to the

Administrative Hearing Commission for determination, the agreement shall become effective fifteen (15) days following the signature of the Commission's Executive Director.

LICENSEES



Rutledge Real Estate and Holding Company LLC
John Rutledge, Designated Broker



John Mickel Rutledge

Date 5/18/17

COMMISSION



Terry W. Moore
Executive Director
Missouri Real Estate Commission

Date May 22, 2017